

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AMERICAN RED CROSS BADGER-HAWKEYE REGION¹

Employer

And

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 4202

Petitioner

Case 13-RC-20710

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time, regular part-time and per diem Chicago area Collection Specialists I and II and Blood Services Mobile Unit employees employed by the Employer, but excluding all Hospital Service Technicians at the Racine Avenue facility, clerical employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Communications Workers of America, Local 4202.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **March 7, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **March 14, 2002**.
DATED February 28, 2002 at Chicago, Illinois.

/s/ Elizabeth Kinney
Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays. A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in their briefs have been carefully considered.
- 3/ The Employer is engaged in the collection and distribution of blood supplies.
- 4/ The Employer is based out of Madison, Wisconsin. It has five separate operations, which are located in 1) Madison, Wisconsin; 2) Green Bay, Wisconsin; 3) Dubuque, Iowa; 4) Waterloo, Iowa, and 5) Chicago, Illinois. The Employer's Chicago operation is the only one that is involved herein. The Chicago operation consists of a mobile unit that collects blood supplies from various sites, such as schools and corporations, and two fixed locations - Rush Presbyterian/St. Luke's Hospital in Chicago (Rush facility) and Racine Avenue in Chicago (Racine Avenue facility). The Rush facility is involved in the collection of whole blood, specialized blood products, and the treatment of patients regarding blood product replacements. The Racine facility is involved in the storage and distribution blood products to hospitals. The two fixed facilities are located approximately one and a half miles from one another.

The Petitioner seeks to represent a unit of all full-time and regular part-time employees in the Employer's Chicago mobile blood collection unit. The petitioned for unit includes the job classifications of Collections Specialist I and II (CS-I and II), Collection Technician II (CT-II) and Mobile Unit Assistant II (MUA-II) working in the Employer's Chicago mobile unit. There are approximately 25 to 26 employees in the petitioned for unit. The Employer takes the position that the six CS-I's working at the Rush facility and the ten Hospital Service Technician's (HST's) working at the Racine Avenue facility share a community of interest with the petitioned for Chicago mobile unit employees and must be included in an appropriate unit. The Employer also contends that the three CS-II's working in the petitioned for mobile unit are supervisors within the meaning of Section 2(11) of the Act and, therefore, should be excluded from any unit found appropriate. There are approximately 38 to 39 employees in the unit that the Employer contends is appropriate. The parties stipulated to the inclusion of per diem employees in the bargaining unit.

Based on the entire record and for the reasons more fully set forth below, I find that:

1. The petitioned unit of employees in the Employer's Chicago mobile operation must also include the CS-I's working at the Rush facility to constitute an appropriate unit.
2. The HST's at the Racine Avenue facility do not share a community of interests with the petitioned for employees in the Employer's Chicago mobile operation and the CS-I's at the Rush facility to such a degree as to require their inclusion in the unit found appropriate.
3. The Employer did not meet its burden of demonstrating that the CS-II's exercise such a degree of discretion or independent judgment in connection with any of Section 2(11) to find them to be supervisors within the meaning of the Act and therefore excluded from any unit found appropriate. Accordingly, I find that the CS-II's are appropriately included in the unit found appropriate.

The Employer's Chicago Operations

The Mobile Unit Operations:

The Employer's Chicago mobile unit operation involves blood collection at various sites, such as corporations, schools, churches, governmental entities, etc. To perform this function the Chicago mobile unit may operate seven days a week, and employees work an average of nine hours a day. Jennifer Huggins is the team supervisor of the Chicago Mobile Unit. She provides the day-to-day supervision of the employees in the Chicago Mobile Unit. Huggins reports to Amy Gartner-Newman, the Manager of Donor Services.

Huggins prepares a schedule of upcoming collection sites about one week in advance. The schedule includes the names of the persons assigned to each site, the collection goal and the hours of collection. The Employer has two trucks and one van, which are driven by employees in the MUA-II classification. The MUA-II's load the vehicle with the needed equipment at Racine Avenue facility with the assistance of HSTs and take it to the collection site. At the collection site, the MUA-II's label the blood and prepare it for packaging and transport and, at the end of the drive; they take the collected blood to Racine Avenue facility. The other employees, CS-I and IIs and possibly a CT-II, working at the site drive themselves to the location from home. They know where to go based upon the schedule. At each mobile collection site one person is designated as the "charge", generally a CS-II. Unless there is a training situation, there is usually one CS-II or acting CS-II on a collection who acts as the "charge". Depending upon the number of hours for the collection and the estimated number of donors, there may be 4 to 12 employees assigned to the site.

When the CS-I's arrive at the mobile site, they report to the CS-II. Depending on the CS-II designated as the "charge", the CS-I's may be given specific quality control assignments or the CS-I's may just start doing the quality control checks that they know have to done. Quality control is a complete check of the machines in order to make sure that they are in the working parameters of the Employer's expectations and standards. The quality control procedures do not vary, and all the CS-I's are trained to do them. The paperwork for quality control is then given to the CS-II and the CS-I is either assigned to do donor screening or to the phlebotomy unit by the CS-II. Half way through the collection, the CS-I's switch - those doing screenings switch to phlebotomy and those doing phlebotomy switch to screening. Donor screening consists of interviewing the donor, taking vital signs, blood pressure, and temperatures. The phlebotomy unit preps the donor for venal puncture, performs any adjustments in order to collect the unit of blood, and reviews the paperwork for completeness. Employees going on break during the collection report to the CS-II "charge". It appears from the record, that the "charge" informs the other employees when going on break so that everyone is aware where all the personnel are located. The MUA-II's prepare the collected blood for packaging and transport to the Racine Avenue facility.

The mobile unit employees keep track of their hours by filling out a time card. The time cards are either given to the whoever is employees CS-II charge on the last day of the payroll period to pass them on to Ms. Huggins or are sent in mail going directly to Ms. Huggins. The CS-II has no authority to adjust an employee's time card without receiving permission from Ms. Huggins. Until recently, all employees called Ms. Huggins if they wanted to take a personal or sick day. On January 2, 2002, the policy

changed and now employees are required to call both Ms. Huggins and the CS-II charge. Ms. Huggins gives the 90-day review for all employees on the Mobile unit. She does all the written evaluations of employee performance. Huggins gets verbal input on an employee's performance from the CS-II's.

The minimum requirements to be a CS-I are to be a RN, LPN, or to progress from a CT-II. The CS-I's receive six to eight weeks of training. Approximately half of the training involves taking donor histories. Either the CS-II or a preceptor does the training. CS-I's have served in the preceptor position and have trained new employees. Trainers give input into whether the trainee is sufficiently proficient in the required skills or whether more training or some other course of action is needed. Some CS-I's on the Mobile Unit have received extra training on a voluntary basis to perform collection work at the Rush facility and are regularly assigned to work there when the Rush facility needs extra help. The Mobile Unit CS-I's are only qualified to work in the alternate collection section at the Rush facility. Since July 2001, about three CS-I's from the Mobile Unit have gone to the Rush facility about five days a week. Likewise, CS-I's from Rush have gone to the Mobile Unit approximately three times a month; they perform this assignment on a voluntary basis, usually to earn extra money. When the CS-I's are at the Rush facility they report directly to the collection op supervisor, Ann Vareness.

There are currently three CS-II's in the mobile unit who report directly to Ms. Huggins; they are: Deborah Dietz, Marilyn Healey and Slavomir Rac. The minimum requirements to be a CS-II is to be a RN, LPN, or to progress from a CS-I. The CS-II's are responsible for making the quality control assignments at the beginning of a shift, they direct how the mobile will be set up, assign staff to their stations, assist the staff, and perform donor screening and phlebotomies. They spend approximately 40% of their time performing the same work as a CS-I. The remaining time is spent reviewing paperwork and donation records. The CS-II's are paid one dollar more an hour than the CS-I's. They have no authority to hire or fire employees. Ms. Huggins testified that CS-II's have the authority to adjust the start and finish time of the Mobile Unit and to cancel the mobile in an emergency situation. CS-I Barbara McGuigan testified that she has been with the Chicago operation since it began and in that time she has only known of one time that a blood drive was canceled and that a high ranking official, not a CS-II, approved the cancellation. McGuigan testified that collection finish times are extended in situations where there are donors who have been registered but have not had blood drawn yet at the scheduled closing. The CS-II charge can allow employees to leave early if they are sick and cannot continue work or if there are many less donors than expected. Huggins testified that the CS-II charge administer the first step of the Employer's disciplinary procedure: counseling. McGuigan testified that any employee can counsel any other employee and that she was not aware that the CS-II charges gave counseling's as a disciplinary matter. No CS-II has filled out one of the Employer's discipline forms, and no employee has been sent home by a CS-II for disciplinary reasons. CS-II's have the authority to remove an employee from a task if they are not following instructions or the correct Employer required procedures. The CS-II charge fills out and signs incident reports if an employee has an accident or is injured on the job.

The Rush Facility Operations

There are six CS-I's at the Rush facility that report directly to Susan Reed, team supervisor for the Rush facility. Ms. Reed reports directly to Ken Hardick. The CSI's at Rush keep track of their time by recording their hours on hand written time sheets. The Rush facility is divided into two sections: special procedures and alternative collections. There are four CS-I's that were hired to work in special procedures and two that were hired for alternative collections. All six CS-I's wear the same uniform as the employees on the Mobile Unit. The Rush hours of operation are Monday and Tuesday from 8 a.m. – 8 p.m. and Wednesday – Saturday from 8 a.m. – 6 p.m.

Special procedures collect special blood products and treat patients. The major difference is that four special procedures CS-I's treat patients by doing plasma, red blood cell and white blood cell replacements. The special procedures CS-I's at the Rush facility use a cell separator, which, by centrifugal force, separates the blood into its different cellular and non-cellular components. The CS-I's on the Mobile Unit are not trained to do the work in special procedures, and when they are assigned to work at the Rush facility they only work in the alternative collections section.

The CS-I's in alternative collections collect blood from donors the same as CS-I's do on the Mobile Unit. The Rush facility CS-I's perform quality control, donor screening, and do phlebotomy procedures. The CS-I's from the Rush facility when working on the Mobile Unit perform similar functions on that unit. On one occasion, a CSI from Rush has gone to the Mobile Unit and performed duties as a MUA-II; however, no MUA-II has ever worked at the Rush facility and they are not trained to do so.

The Racine Avenue Operations

The Hospital Service Department is located at the Racine facility. Hospital Services stores blood and blood products for transfusion, receives orders from hospitals, and distributes blood and blood products to the hospitals. Hospital Services has ten HST's and two Hospital Service Supervisors (HSS's). The HSS's report to Kevin Hess, Manager of Hospital Services, who is based out of Madison, Wisconsin. Hospital Services operates around the clock on three shifts with 2-3 employees on each shift. The HST's punch a time clock at the beginning and end of their shifts. The HST's wear lab coats over their street clothes while working.

HST's main functions are to do inventory, remove expired blood products, review temperature print outs, and take and fill orders from hospitals. The HST's may also spend approximately one hour to one and one half hours a day assisting the MUA-II's from the Mobile Unit with loading and unloading supplies onto the Mobile Unit's trucks.

A few of the HST's go to the Rush facility twice a day to deliver blood, supplies, mail and dry ice. The HST's interaction with employees from Rush consists of approximately ten minutes a day. The HST's are not trained to perform services at Rush or the Mobile Units. The MUA-II's, however, are trained to work as HST's and have performed the work of HST's. Approximately two years ago, when mobile collections was slow, Antonio Oaks, a MUA-II, worked as both a HST and a MUA-II in order to remain a full-

time employee. Also in July 2001, for approximately four weeks, MUA-IIs worked at the Racine facility two or three days a week in order to meet their 37 1/2 hour work-week requirement to maintain their full-time status.

Common Terms of Employment

All employees at the Chicago operations are paid hourly on a bi-weekly basis. They receive the same benefits including vacation, sick leave, holiday, and health insurance. The MUA-IIs and the HSTs receive the same retirement plans. The Employer has a pay scale that is based on an increasing salary grade. Each step of the pay grade represents a range and, therefore, employees in the same grade are not paid the same amount. MUA-IIs are in grade three, and HSTs are in grade four, while the CS-Is in the Mobile Unit and Rush are in grade six. CS-IIs are in pay grade eight. In November 2001, the Mobile Unit CS-Is, CS-IIs, and MUA-IIs received a market adjustment to their salary that was not given to employees at Rush and Racine. Employees at Rush, Racine, and the Mobile units are subject to the same personnel policies including a code of conduct, code of ethics, annual performance evaluations, complaint procedure, probationary period, disciplinary policy, and promotion and transfer policy. All employees attend new employee training, OSHA training, and meetings with regard to changes to policy and procedure together.

Bargaining History at other facilities of the Employer

Unions currently represent the employees at the Green Bay, Madison, and Dubuque operation. At the Madison-Green Bay operation there are two bargaining units. One unit is comprised of RNs, LPNs, CTI-Is and CS-Is and Collection Technician II's (CTI-I's). The other unit consists of collection clerks, Mobile Unit Assistant II's (MUA-IIs), and tele-recruiters. The Dubuque operation also has two bargaining units. One unit consists of only CS-Is and the other unit has MUA-IIs, collection clerks and tele-recruiters. Each operation has CS-IIs that were not included in the unit because of their "supervisory" status. There is no evidence on the record as to who or how the "supervisory" status of the CS-IIs was made.

Analysis

Unit

The issue presented in a unit determination "is whether or not the unit requested by the Petitioner is appropriate for the purposes of collective bargaining. Where a petitioning labor organization is the sole union involved in the proceeding, it is irrelevant that some other larger or smaller unit might also be appropriate, or, indeed, might be the most appropriate." *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037,1038 (1967); *Overnite Transportation Co.*, 322 NLRB 723 (1996); see also, *American Hospital Assn. v. NLRB*, 499 U.S. 606, 610 (1991) (Section 9(a) means that "employees may seek to organize 'a unit' that is appropriate-not necessarily the single most appropriate unit.") If the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *PJ Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). If, however, the unit sought by petitioner is not an appropriate unit, alternate units are to be considered. *Id.* at 151.

The key determination whether a unit is appropriate under Section 9(a) of the Act for the purposes of collective bargaining is whether the employees in the proposed unit have a sufficient community of interest. *Washington Palm, Inc.*, 314 NLRB 1122 (1994). To determine the community of interests among employees in a proposed unit, the Board commonly examines the following factors: the similarities or differences of duties and skills of the employees in the proposed unit; the degree of integration among the various groups or classifications of employees; commonality of supervision; interchangeability and contact among employees; and similarity or differences in general working conditions and fringe benefits. *Id.* at 1126-1127; see also, *Kalamazoo Paper Box Co.*, 136 NLRB 134, 137 (1962).

The Rush Facility CS-Is

As previously set forth, the Petitioner seeks a unit limited to the Employer's mobile operations. The Employer, on the other hand, contends that the employees working at the Rush facility (CS-Is) share such a substantial community of interest with the mobile unit employees that an appropriate unit of the mobile employees must also include the Rush facility employees. The Petitioner points to the differences in supervision, work schedules, and the limited interchange between the mobile unit employees and the special procedures section of the Rush facility in support of its position that the Rush facility employees need not be included in the unit.

Notwithstanding the differences between the mobile unit employees and the Rush facility employees pointed out by the Petitioner, the record shows that there is a substantial community of interest between the CS-I employees at the Rush location and those working on the Mobile Units. There is substantial and continuing two way interchange between the mobile unit CS-Is and the Rush facility CS-Is, especially in the alternative collection section at the Rush facility. Thus, the record demonstrates that the Rush facility CS-Is will fill in on the mobile units when needed and perform the same type of functions regarding the collection of blood that they perform at the Rush facility. Conversely, a number of mobile unit CS-Is have trained to fill in at the Rush facility when needed there. Thus, Mobile Unit Supervisor Jennifer Huggins regularly assigns Mobile Unit CS-Is to work at Rush. The CS-Is, regardless of whether employed in the mobile unit or at the Rush facility are all involved with the collection of blood whether it is whole blood or other variations. They are all in the same employee classification and pay grade and receive similar benefits. Based upon foregoing and the entire record herein, I conclude that the Rush facility CS-Is have such a substantial community of interests with the Mobile Unit employees that excluding them from the unit found appropriate would create arbitrary, artificial, and heterogeneous groupings of employees. Accordingly, I have included the Rush facility CS-Is in the unit. *J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Harrah's Illinois Corporation*, 319 NLRB 749 (1995).

The Racine Facility HST's

The HST's at Racine do no work at Rush or the Mobile Units. They are in a distinct job classification from any of the employees in the mobile unit or at the Rush facility, are paid less than most of the employees in the mobile unit and the Rush facility,

have completely separate supervision, and perform distinct job duties from the mobile unit employees and Rush facility employees. Furthermore, the Racine facility HST's have limited contact with the Rush facility and the Mobile Unit, being limited to the delivery and pick up of supplies and mail at the Rush facility or helping out the MUA-Is loading and unloading their trucks. They have no regular interaction with the majority of the employees in the petitioned for unit. Sporadically, a MUA-II may perform duties as a HST in order to maintain their full-time status. However, the HST's are not trained to perform the duties of a MUA-II. In view of their distinct job classification and duties, distinct supervision from the collection employees, and limited interchange with the blood collection employees in the mobile unit and at the Rush facility, I find that HSTs do not share such a degree of community of interests with the petitioned for unit to require their inclusion in the unit in order to avoid creating artificial or heterogeneous groupings of employees. *Overnite Transportation Co.*, 322 NLRB 347, 322 NLRB 723 (1996). I will, therefore, exclude them from the unit found appropriate herein.

Supervisory Status of Collection Specialist IIs

Section 2(11) of the National Labor Relations Act sets forth the test to determine supervisory status. It provides:

The term "supervisory" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline employees or to recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgement.

The exercise of any one of these authorities is sufficient to confer supervisory status; such authority, however, must be exercised "with independent judgment on behalf of management and not in a routine or sporadic manner" (citation omitted)); *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990). The burden of demonstrating supervisory status is on the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 121 S. Ct. 1861, 1867 (2001); *Alois Box Co.*, 326 NLRB 1177 (1998); *Bennett Industries*, 313 NLRB 1363 (1964). In each case, the differentiation must be made between the exercise of independent judgment and the routine following of instructions, between effective recommendation and forceful suggestion and between the appearance of supervision and supervision in fact. See, e.g., *Chevron Shipping Co.*, 317 NLRB 379 (1995); *J.C. Brock Corp.*, 314 NLRB 157 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992); and *Quadrex Environmental Co.*, 308 NLRB 101 (1992).

Applying these principles to the instant case, I find that the record fails to demonstrate that the Collection Specialist II's are supervisors as defined in Section 2(11) of the Act. As noted above, the burden of demonstrating supervisory status is on the party claiming that an employee is a supervisor -- in this case the Employer. *NLRB v. Kentucky River Community Care, Inc.*, *supra*. It is clear from the record that the CS-II's cannot hire, fire, transfer, suspend, layoff, recall, promote or reward other employee. Nevertheless, the Employer contends that the CS-II-s meet the Section 2(11) criteria, asserting CS-II-s can discipline employees; have the authority to vary the employees hours of work; assign work to employees, responsibly direct the mobile unit employees

work; and make effective recommendations regarding the retention of employment, pay increases, and discipline.

With regard to discipline, the record shows that the CS-IIs may counsel employees. However, the record is devoid of any indication that this involves more than informing an employee of a problem that needs correction. Other than a bare assertion that a “counseling” is part of the disciplinary system, the record does not demonstrate the consequences of a “counseling” in the disciplinary system or what weight, if any, a “counseling” is given with regard to future discipline. The record testimony of a long term CS-I demonstrates a lack of awareness among employees that a “counseling” by a CS-II is disciplinary in nature or different from a “counseling” that may be given by any of the more experienced employees, including CS-Is, to other employees. In sum, the Employer has not met its burden of demonstrating that CS-IIs have authority to discipline employees. Similarly, the record does not demonstrate that the CS-IIs make effective recommendations with regard to any of the Section 2(11) indicia. While the record does demonstrate that CS-IIs may give their opinions about employee performance for evaluations and training progress, the record does not demonstrate the CS-IIs opinions met the criteria of being effective recommendations. Thus, while Huggins testified that she gives more weight to the opinions of the CS-IIs than those of CS-Is, the record does not demonstrate that opinions of the CS-IIs are generally relied upon to effectuate a personnel action or “result in personnel action being taken without resort to individual investigation by higher authority”. *Hawaiian Telephone Co.*, 186 NLRB 1 (1970).

The record does show that the CS-IIs assign tasks to mobile unit employees and that they can direct the work of the mobile unit employees. However, the record fails to demonstrate that the CS-IIs exercise the “independent judgment” required under Section 2(11) in performing these functions such that they constitute the exercise of supervisory indicia. In *NLRB v. Kentucky River Community Care, Inc.*, *supra*, 121 S. Ct. 1861, 1867 (2001), the Supreme Court noted that to find an employee to be a supervisor the exercise of any of the listed indicia in Section 2(11) of the Act requires the use of “independent judgment” and the exercise of the authority is not merely routine or clerical in nature. The Court further noted that it “falls clearly within the Board’s discretion to determine, within reason, what scope of discretion qualifies” under Section 2(11) of the Act so long as the same criteria for the exercise of independent judgment is uniformly applied to all the indicia listed in Section 2(11) and to all employees engaged in any of the listed supervisory indicia.¹

The Board law with regard to the degree of “independent judgment” required under Section 2(11) of Act for a finding of supervisory authority is clear and well established. The mere distribution of work assignments that are created by management personnel does not confer supervisory status. *Alois Box*, *supra* at 1179; *Blue Star Ready-Mix Concrete Corp.*, 305 NLRB 429 (1991). It is also clear that an individual is not a supervisor if his/her judgment is so constrained by rules, directives or guidelines of the employer that his/her judgment is no longer the independent judgment required by

¹ The Court in *Kentucky River* found that the Board could not categorically exclude otherwise qualifying “independent judgment” with regard to only one or two of the listed indicia of supervisory authority in Section 2(11) because the independent judgment being exercised was based upon the employee’s professional training and experience.

Section 2(11) of the Act. *NLRB v. Kentucky River Community Care, Inc.*, *supra*, 121 S. Ct. 1861, 1867 (2001); *Alois Box*, *supra* at 1179; *Juniper Industries*, 311 NLRB 109 (1993). Furthermore, the wording of Section 2(11) of the Act makes it clear that performing any of the listed supervisory indicia in a routine or clerical manner does not meet the standard for the exercise of qualifying independent judgment.

Applying the foregoing principles to matter at hand, it is the opinion of the undersigned that the record herein fails to establish that the CS-IIs exercise the required independent judgment in assigning work or responsibly directing the work of the mobile unit employees. Quality control is performed in compliance with procedures and guidelines that are established by the Employer and the CS-IIs do not have the authority to adjust those requirements. The record demonstrates quality control function is a set routine, the employees are well trained in performing this function as well as their other functions, the employees can and do on their own initiative perform the quality control checks, and, and, thus, while some some do, it is not necessary for the CS-II charge to make quality control assignments. Furthermore, once the collection site is set up there are only two choices of job assignments for the CS-II charge to make - to assign the CS-IIs to take histories or to do the phlebotomies. A choice that is of little consequence as these tasks are switched at the half waypoint of a collection. In sum, the record as a whole demonstrates that the CS-IIs assignment of work and direction of employees work falls within the category of being routine rather than the exercise of qualifying independent judgment. The authority of CS-IIs, on the record herein, is akin to that typical exercised by persons found by the Board to lead persons rather than supervisors. *Highland Superstores, Inc. v. NLRB*, 927 F.2d 918, 921 (6th Cir. 1991).

With regard to authority of the CS-II's to terminate a collection, to extend the hours of a collection, or to allow employees to go home early the record either fails to establish that the CS-II charge has such authority or that the CS-II charge exercises independent judgment in connection with these authorities. The record demonstrates only one instance where the collection was cut short, and that the decision to do so was made higher management. Further, Huggins testified that a decision to cancel a collection was a collective decision, and there is no indication on the record that shows the extent or weight that might be given to the CS-II's opinion on such a situation. With regard to extending the hours of a collection, the record demonstrates that this is determined by specific circumstances rather than the judgment of the CS-II charge. Thus, the record shows that a collection is automatically extended when there are donors whose registration has been processed but whose blood has not been drawn by the scheduled close of the collection. With regard to the authority of the CS-II charge's to allow an employee to leave early, the record shows that this occurs in the context of the employee's request due to illness or because there are fewer donors than anticipated and work is slow. I find, in these circumstances, this limited authority is insufficient and does not require the exercise of independent judgment to find the CS-IIs to be supervisors within the meaning of the Act.

While the Employer contends that the CS-IIs must be found to be supervisors otherwise there are no supervisors at all on the mobile units, I can not, in the absence of finding the exercise of any of the supervisory indicia in Section 2(11) of the Act with independent judgment, find them to be supervisors based on such a circumstantial

inference. Furthermore, it appears from the record, the telephonic contact between the mobile unit and Huggins and her superiors provide the necessary supervisory authority structure for the operation of the mobile units. *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 581-582 (6th Cir. 1965).

Based upon the foregoing, I have found that the CS-IIs are not supervisors within the meaning of Section 2(11) of the Act and have included them in the unit found appropriate. There are approximately 32 employees in the unit found to be appropriate herein.

Finally, in its brief the Petitioner contends that the election in this case should be conducted by a mail ballot election. It is well settled that questions concerning the mechanics of an election are left to the discretion of the Regional Director. *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954). Thus, it is not necessary to rule on the Petitioner's contention.

177-8520-1600	177-8520-4700
177-8520-6200	177-8520-9200
177-8520-0800	370-4270
440-1769-9133-0500	440-1769-9133-4300
440-1769-9133-5700	440-1769-9133-6700
177-420-2900	177-420-4000
177-420-4025	177-420-4033

CATS - UntOS, VelSE
